



April 19, 2001

Mr. Jesus Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla  
Dallas, Texas 75201

OR2001-1556

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146209.

The City of Dallas (the "city") received a request for all information used in the city's assessment of a specified workers compensation claim. You indicate that you have released a portion of the requested information to the requestor. However, you claim that the portion of the requested information that you have provided to this office as exhibits B and C is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the document submitted as exhibit B is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). This exception applies to communications made to the attorney in confidence and in furtherance of rendering professional services and to information that reveals the attorney's legal opinion or advice. Open Records Decision Nos. 589 at 1 (1991), 574 at 3 (1990), 462 at 9-11 (1987).

You explain that the city contracts with Ward North America ("Ward") for the administration of the city's workers compensation claims and that the subject information is a letter concerning such a claim from an attorney who represents Ward in these matters. From our review of this letter, we find that it contains the legal advice and opinion of this attorney regarding the workers compensation claim that is the subject of this request for information. We take your position to be that Ward is acting as the agent of the city in this matter and

therefore, the attorney is providing legal services to the city in rendering this legal advice and opinion. You assert the attorney-client privilege to protect that communication. Based on your representations, we assume that Ward is acting as the agent of the city in this matter, and the advice of counsel is made to Ward in its capacity as agent of the city. *See* Texas R. Evid. 503(a)(2)(b)(defining "representative of a client"), 503(b)(1). We conclude that exhibit B may be withheld under section 552.107(1).

You contend that the materials submitted as exhibit C are excepted from disclosure by section 552.111 of the Government Code. This section excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those communications that consists of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions do not encompass internal administrative or personnel matters since disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6. You explain that exhibit C is a memoranda prepared by Ward concerning the subject workers compensation claim. From our review of this item, we find that it is a history of the administrative actions in this particular claim. We conclude that this is an administrative communication that does not reflect the city's policymaking process. Therefore, exhibit C is not excepted from required disclosure by section 552.111 of the Government Code.

In summary, the city may withhold exhibit B but must release exhibit C.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor, should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/rr

Ref: ID# 146209

Encl: Submitted documents

cc: Ms. Sherrie Wilson  
12127 Larchgate Dr.  
Dallas, Texas 75243  
(w/o enclosures)